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Counsel for Defendant The State Bar of California,  
Hon. Judith Epstein, Hon. Madge Watai, Hon. Ronald Stovitz,  
Hon. Patrice McElroy, Scott Drexel, Lawrence J. DalCerro,  
Donald R. Steedman, Tammy Albertsen-Murray,  
Erica L. Dennings, Michael Hummer, Jeffrey Bleich  
and Sheldon Sloan

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

Francis Fahy,  
Plaintiff,  
v.  
Justices of the Supreme Court of the State of  
California, et al.,  
Defendants.

Case No. CV 08-2496-CW

**[PROPOSED] ORDER GRANTING  
STATE BAR DEFENDANTS' MOTION  
TO DISMISS**

Justices of the Supreme Court of the State of California, et al.,

## Defendants.

Following review and consideration of the written and oral arguments of the parties and all documentation and evidence in the record regarding the Motion to Dismiss the Complaint filed by State Bar Defendants – The State Bar of California, Hon. Judith Epstein, Hon. Madge Watai, Hon. Ronald Stovitz, Hon. Patrice McElroy, Scott Drexel, Lawrence DalCerro, Donald R. Steedman, Tammy Albertsen-Murray, Erica L. Dennings, Michael Hummer, Jeffrey Bleich and Sheldon Sloan:

**IT IS HEREBY ORDERED THAT:**

1. Plaintiff Fahy's Complaint and each and every claim for relief therein is  
 2. DISMISSED as to The State Bar of California, Hon. Judith Epstein, Hon. Madge  
 3. Watai, Hon. Ronald Stovitz, Hon. Patrice McElroy, Scott Drexel, Lawrence  
 4. DalCerro, Donald R. Steedman, Tammy Albertsen-Murray, Erica L. Dennings,  
 5. Michael Hummer, Jeffrey Bleich and Sheldon Sloan (collectively the "State Bar  
 6. Defendants"), WITHOUT LEAVE TO AMEND on the following grounds:

7. A. The Eleventh Amendment bars all of Plaintiff Fahy's claims against  
 8. defendant The State Bar of California including all pendent state law  
 9. claims. The Eleventh Amendment also bars all of Plaintiff Fahy's federal  
 10. claims, any request for retroactive relief and all state damage and equitable  
 11. claims against the individual State Bar defendants in their official  
 12. capacities.

13. B. Plaintiff Fahy's claims are also jurisdictionally barred by the Rooker-  
 14. Feldman doctrine as his claims arise solely from the California Supreme  
 15. Court's decision to sanction him for ethical misconduct and the fact that  
 16. this Complaint constitutes a de facto appeal from that state court  
 17. judgment.

18. C. All State Bar Defendants are immune from liability for monetary  
 19. damages. The federal common law doctrine of judicial immunity  
 20. precludes money damages suits against The State Bar of California and its  
 21. defendant officers and employees as such actions are based on alleged  
 22. wrongdoing in the course of administering attorney discipline. See Hirsh  
 23. v. Justices of Supreme Court of State of Cal., 67 F.3d 708, 714-715 (9<sup>th</sup>  
 24. Cir. 1995).

25. D. Claim and issue preclusion also bar Plaintiff Fahy from relitigating his  
 26. claims, as his claims were necessarily decided in a prior state proceeding  
 27. brought before the California Supreme Court and Plaintiff had a full and  
 28. fair opportunity to litigate his issues in the state proceeding, As a matter of

1 law, Plaintiff Fahy has failed to state a cognizable claim of due process  
2 violations in the underlying state proceeding as he was provided a  
3 meaningful opportunity to be heard in these proceedings, he has not  
4 overcome the presumption of honesty and integrity of adjudicators, and he  
5 has not established that the state proceedings were so infirm as to warrant  
6 the federal court's intervention.

7 E. Plaintiff Fahy also fails to state a federal civil rights claim under 42 U.S.C.  
8 section 1983 against the State Bar Defendants. The State Bar and its  
9 officials are not "persons" subject to suit under section 1983 (Wills v.  
10 Michigan Dept. State Police, 491 U.S. 58, 70-71), Moreover, Plaintiff has  
11 failed to establish a deprivation of any federal rights.

12 F. Plaintiff Fahy fails to state a claim for malicious prosecution, civil rights  
13 conspiracy under either 18 U.S.C. 241 or 42 U.S.C. 1985, or supervisory  
14 liability. Moreover, Fahy has not stated a cognizable claim that the State  
15 Bar's practice of counting a failure to demonstrate rehabilitation or atone  
16 for wrongdoing as an aggravating disciplinary factor, constitutes a  
17 violation of Article Six of the United States Constitution or that the State  
18 Bar's inference that client trust accounts that fall below the amount  
19 credited to a client will support a finding of misappropriation, constitutes  
20 an unconstitutional irrebuttal presumption.

21 G. Plaintiff Fahy also fails to state a claim for his alleged state violations as  
22 the State Bar Defendants retain both common law judicial immunity and  
23 statutory immunity from suit, he has not alleged compliance with the  
24 state's Government Claims Act, and he has not adequately alleged a  
25 violation of either California's Unruh Act or California's Unfair  
26 Competition Act.

27 H. Finally, Fahy's request for equitable relief is highly improper as he has  
28 presented no well-pleaded facts to support his extraordinary requests and

granting the requested relief would unnecessarily interfere with the California Supreme Court's and State Bar's ability to perform their official duties.

2. For all the foregoing reasons, all claims raised by Plaintiff Fahy against all State Bar Defendants are dismissed without leave to amend and the Clerk of the Court is directed to enter judgment in the case in favor of all State Bar Defendants.

DATED: \_\_\_\_\_

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Hon. Claudia Wilken

1 PROOF OF SERVICE BY MAIL

2 I, Joan Sundt, hereby declare: that I am over the age of eighteen years and am not a  
3 party to the within above-entitled action, that I am employed in the City and County of San  
4 Francisco, that my business address is The State Bar of California, 180 Howard Street, San  
5 Francisco, CA 94105.

6 On, September 5, 2008, following ordinary business practice, I placed for collection  
7 for mailing at the offices of the State Bar of California, 180 Howard Street, San Francisco,  
8 California 94105, one copy of [PROPOSED] ORDER GRANTING STATE BAR  
9 DEFENDANTS' MOTION TO DISMISS fully prepaid in an envelope addressed as follows:

10 Francis Fahy  
11 259 Oak Street  
12 San Francisco, CA 94102

13 I am readily familiar with the State Bar of California's practice for collection and processing  
14 correspondence for mailing with the U.S. Postal Service and, in the ordinary course of business,  
15 the correspondence would be deposited with the U.S. postal mail service on the day on which it  
16 is collected at the business.

17 I declare under penalty of perjury under the laws of the State of California that the  
18 foregoing is true and correct.

19 Executed at San Francisco, California this 5th day of September, 2008.

20 s/Joan Sundt

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